



September 17, 1999

Ms. Karen Horner  
Assistant City Attorney  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424

OR99-2602

Dear Ms. Horner:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 127741.

The City of Baytown (the "city") received a request for copies of certain salary and retirement benefit records of a city employee. The request is in the form of a subpoena. However, because you consider the subpoena to be defective under the Texas Rules of Civil Procedure, you are treating the request as a request under the Act. You assert that the W-2 Form of the Internal Revenue Service, the amount of FICA tax withheld, the total FICA wages, the deductions for the Texas Municipal Retirement System and the deductions for insurance coverage for dental care are excepted from public disclosure by sections 552.101 and 552.102 of the Government Code.

Section 552.101 excepts from disclosure information made confidential by law, including information made confidential by statute. The income tax information is deemed confidential by section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992).

Section 552.101 also excepts from disclosure information made confidential under judicial decisions recognizing the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* We agree that the

submitted highlighted information is private information that the city must withhold from the requestor based on section 552.101 in conjunction with the common-law right to privacy. *See id.*

In light of our determinations under section 552.101, we need not address your section 552.102 claims. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Kay H. Hastings".

Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/nc

Ref.: ID# 127741

Encl. Submitted documents

cc: Mr. Terry Daniels  
Legal Records & Subpoena Service  
P.O. Box 1071  
Bellaire, Texas 77401  
(w/o enclosures)